

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-694-00
REMarum

date:

to: Chief, Examination Division, Connecticut-Rhode Island District
Attn: Edward R. Kurinsky, Case Manager

from: District Counsel, Connecticut-Rhode Island District, E. Hartford

subject: Treatment of TEFRA Issues on Audit
CEP Case--[REDACTED]--Our Memorandum of October 21, 1999

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This is in reference to your memorandum dated February 7, 2000, whereby you requested our opinion as to whether an adjustment under the I.R.C. § 6501 statute may be made for a flow-through loss from a Limited Liability Corporation (which files a partnership return), which the taxpayer inadvertently omitted from its [REDACTED] return. We have concluded that you may make that adjustment under the section 6501 statute in accordance with section 6222.

The facts set forth below are summarized from your memorandum and the subsequent telephone conversation between Robert E. Marum, the attorney assigned this case, and the examining agent, Roula Karavitis:

Facts:

1. Ms. Karavitis asked the taxpayer through an IDR to provide a list of all returns filed for the next subsequent year, [REDACTED].

2. In response to the IDR, the taxpayer mentioned that in [REDACTED] it had a [REDACTED] % involvement in a joint venture through [REDACTED] ("LLC") with a foreign entity.

3. The two partners of the LLC, subsidiaries of the taxpayer, were each entitled to [REDACTED] % of a \$ [REDACTED] loss for [REDACTED]. The taxpayer inadvertently neglected to claim said loss.

4. The taxpayer filed its [REDACTED] return on [REDACTED], and the statute of limitations is open under section 6501 pursuant to a general consent. It did not contain the special language pertaining to TEFRA partnerships. (The taxpayer's [REDACTED] return had not reported any distributive income/losses from partnerships.)

5. The LLC filed its partnership return for [REDACTED] on [REDACTED], and the statute of limitations for said return expired on [REDACTED].

6. On [REDACTED], the taxpayer requested that an adjustment for [REDACTED] be made in its favor for the \$ [REDACTED] unclaimed partnership loss.

7. On October 21, 1999, we had sent a memorandum to the Chief, Examination Division, Branch I, Connecticut-Rhode Island, responding to certain questions concerning the treatment of TEFRA issues on audit. That memorandum referenced a memorandum from Thomas W. Wilson, Jr., National Director, Corporate Examinations CP:EX:G to Regional Chief Compliance Officers, dated April 7, 1998, as well as LGM TL-81 (Rev), issued on September 25, 1998.

8. The Wilson memorandum instructed Examination personnel that in any situations arising in which the section 6229 period had expired but the partner's period for assessment under section 6501 remained open, they should consult with District Counsel.

9. LGM TL-81 similarly states that for any case in which an argument is advanced that a notice [FPAA or statutory notice of deficiency, if applicable] was timely under section 6501, despite the fact that the notice was not issued within the section 6229 guidelines, coordination will be required with the National Office Procedural Branch of the Field Service Division.

10. Based upon your review of the Wilson memorandum and LGM TL-81, you requested our advice in this matter.

Legal Analysis:

Section 6222(a) generally provides that a partner's return shall treat a partnership item consistently with the treatment of such partnership item on the partnership return.

Section 6222(b) generally provides that, if a partner notifies the Service of inconsistent treatment of a partnership item and files a statement identifying the inconsistency, section 6222(a) shall not apply to such item.

Filing a Form 8082 will satisfy the statement requirement. While the taxpayer did not file a Form 8082, it did notify the examining agent that its two subsidiaries had each inadvertently neglected to claim a \$[REDACTED] loss from the LLC for [REDACTED].

Section 6222(c) provides that if the partner's treatment on a return is inconsistent with the treatment on the partnership return and the partner does not file a statement, section 6225 shall not apply to any part of a deficiency attributable to any computational adjustment required to make the treatment of the items by such partner consistent with the treatment of the items on the partnership return.

Section 6225 contains provisions providing for assessments that are made only after partnership level proceedings are complete. The instant case does not involve partnership level adjustments.

Thus, the Service, either with or without a statement from the partner, can make a computational adjustment, without having to complete a partnership level proceeding pursuant to section 6225.

Temp. Treas. Reg. § 301.6222(b)-2T(a) contains the following language concerning the effect of notification of inconsistent treatment:

Generally, if a partner treats a partnership item on the partner's return in a manner which is inconsistent with the treatment of that item on the partnership return the Service may make a computational adjustment to conform the treatment of the item by the partner with the treatment of that item on the partnership return. Any additional tax resulting from that computational adjustment may be assessed without either the commencement of a partnership proceeding or notification to the partner that all partnership items arising from

that partnership will be treated as nonpartnership items. . . .

The identical language is found in Prop. Treas. Reg. § 301.6222(b)-2(a).

In the subject case, the LLC reported a loss, [REDACTED] % of which should have been reported by the taxpayer as a flow-through item. However, the taxpayer did not report this loss. Thus, the taxpayer did not treat the partnership item in a manner consistent with the LLC's return. In this circumstance the Service may make a computational adjustment in favor of the taxpayer without having to conduct a partnership level proceeding under section 6225.

Because a partnership level adjustment is not involved, the section 6501 statute, which is open in this case pursuant to an extension, albeit without the special 6229 language, enables you to make the computational adjustment for [REDACTED] in the taxpayer's favor with respect to the \$[REDACTED] partnership loss from the LLC.

Please note that this opinion is based upon the facts set forth herein. Should you determine that the facts are different, you should not rely upon this opinion without conferring with this office, as our opinion might change. Further, this opinion is subject to post-review in our National Office. That review might result in modifications to the conclusions herein. Should our National Office suggest any material change in the advice, we will inform you as soon as we hear from that office.

The subject case is assigned to Robert E. Marum of this office, who may be reached at (860) 290-4068 should you have any further questions.

BRADFORD A. JOHNSON
Acting District Counsel

By: _____

ROBERT E. MARUM
Attorney